



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

### PIEDMONT REGIONAL OFFICE

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L. Preston Bryant, Jr.  
Secretary of Natural Resources

David K. Paylor  
Director

Gerard Seeley, Jr.  
Regional Director

## STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT

### ISSUED TO

### ILUKA RESOURCES INCORPORATED

VPA Permit No. 00563

VPDES Permit No. VA0090981

VPDES Permit No. VA0091456

VPDES Stormwater Permit No. VAR051396

VPDES Stormwater Permit No. VAR051217

### **SECTION A: Purpose**

This is a Consent Special Order issued under the authority of Va. Code §§ 10.1-1185 and 62.1-44.15(8a) and (8d), between the State Water Control Board and Iluka Resources Incorporated, for the purpose of resolving certain violations of environmental law and regulations.

### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Special Order.

6. "Iluka" means Iluka Resources Incorporated, certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. "VPA" means the Virginia Pollution Abatement permit.
8. "VPDES" means the Virginia Pollution Discharge Elimination System permit.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. Iluka owns and operates facilities in Dinwiddie and Sussex Counties, Virginia. Those facilities are subject to VPA Permit No. 00563 (Old Hickory Mine Sites), VPDES Permit VA0090981 (Old Hickory Sand Processing Plant) and VPDES Storm Water Permit VAR051217 (Old Hickory Stormwater), VPDES Permit VA0091456 (Concord), and VAR051396 (Concord Mine Concentrator site #2).
2. Department conducted inspections of Iluka's facilities on June 11, 2004, April 27, 2005, and May 18, 2006, and found the following:
  - On June 11, 2004, Department staff discovered less than 2 feet of freeboard in the Hickory Mine Concentrator clarifying pond. During the inspection, the Department also observed that Iluka had failed to employ the housekeeping required to keep product from off-site migration.
  - On April 27, 2005, the Department discovered Iluka had not conducted quarterly visual examinations (Part I A.1.a) or any comprehensive site compliance evaluations (Part III E) required by the Industrial stormwater permits at the Concord Mine Concentrator (VAR051396) and the Mineral Sands Processing Plant (VAR051217). Staff observed additional inadequate operation and maintenance in a clarifying pond at the Hickory Mine Concentrator site. Site maintenance and housekeeping appeared inadequate to prevent a discharge.
  - On May 18, 2006, the Department observed an unauthorized discharge of 20,000 gallons from a mineral sands feed pipeline at the Hickory Mine Concentrator site that lasted approximately 20 minutes.
3. In addition to the discharge observed by Department staff on May 18, 2006, Iluka has reported 10 unauthorized discharges from its facilities since August of 2004.
4. On August 2, 2006, the Department met with Iluka to discuss the discharges and the compliance issues observed during Department inspections.
5. On September 15, 2006, the Department issued a Notice of Violation (NOV) to Iluka citing them for the above deficiencies and unauthorized discharges. In addition Iluka was cited for making physical alterations and additions to the process that increased the quantity and quality of pollutants discharged including the installation of the cyclone at the mineral sands processing plant, the addition of the secondary concentrate pile, and increasing the drainage area adjacent to the secondary concentrate pile.

#### **SECTION D: Agreement and Order**

By virtue of the authority granted it pursuant to Va. Code §62.1-44.15 and upon consideration of Va. Code § 10.1-1186.2, the Board orders Iluka, and Iluka agrees, to perform the actions described below and in Appendices A and B of this Order. In addition, the Board orders Iluka, and Iluka voluntarily agrees, to a civil charge of \$17,100 in settlement of the violations cited in this Order, to be paid as follows:

1. Iluka shall pay \$3,600 of the civil charge within 30 days of the effective date of this Order. Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

The payment shall include Iluka's Federal ID number and shall identify that payment is being made as a result of this Order.

2. Iluka shall satisfy \$13,500 of the civil charge by satisfactorily completing the Supplemental Environmental Project (SEP) described in Appendix B of this Order.
3. The net project cost of the SEP to Iluka shall not be less than the amount set forth in Paragraph D.2. If it is, Iluka shall pay the remaining amount in accordance with Paragraph D. 1 of this Order, unless otherwise agreed to by the Department. "Net project costs" means the net present after-tax cost of the SEP, including tax savings, grants, and first-year cost reductions and other efficiencies realized by virtue of project implementation. If the proposed SEP is for a project for which the party will receive an identifiable tax savings (*e.g.*, tax credits for pollution control or recycling equipment), grants, or first-year operation cost reductions or other efficiencies, the net project cost shall be reduced by those amounts. The costs of those portions of SEPs that are funded by state or federal low-interest loans, contracts, or grants shall be deducted.
4. By signing this Order Iluka certifies that it has not commenced performance of the SEP.
5. Iluka acknowledges that it is solely responsible for completing the SEP project. Any transfer of funds, tasks, or otherwise by Iluka to a third party, shall not relieve Iluka of its responsibility to complete the SEP as described in this Order.
6. In the event it publicizes the SEP or the SEP results, Iluka shall state in a prominent manner that the project is part of a settlement of an enforcement action.
7. The Department has the sole discretion to:

- a. Authorize any alternate, equivalent SEP proposed by the Facility; and
- b. Determine whether the SEP, or alternate SEP, has been completed in a satisfactory manner.

Should the Department determine that Iluka has not completed the SEP, or alternate SEP, in a satisfactory manner, the Department shall so notify Iluka in writing. Within 30 days of being notified, Iluka shall pay the amount specified in Paragraph D.2., above, as provided in Paragraph D.1., above.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of Iluka, for good cause shown by Iluka, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to Iluka by DEQ on September 15, 2006. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Iluka admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Iluka consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Iluka declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Iluka to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing

herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Iluka shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Iluka shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Iluka shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.


Failure to so notify the Regional Director within 24 hours of learning of any condition above, which Iluka intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Iluka. Notwithstanding the foregoing, Iluka agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. Iluka petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - b. The Director or Board terminates the Order in his or its sole discretion upon 30 days notice to Iluka.

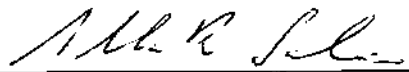
Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Iluka from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signature below, Iluka voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of June 29, 2007.

  
Gerard Seeley, Jr., Regional Director  
Department of Environmental Quality

Iluka voluntarily agrees to the issuance of this Order.

By:   
Date: 4-17-07


Commonwealth of Virginia

City/County of SUSSEX

The foregoing document was signed and acknowledged before me this 17 day of

APRIL, 2007, by ALLAN R SALE, who is  
(name)

PRESIDENT of Iluka, on behalf of the Corporation.  
(title)

  
Notary Public

My commission expires: 10-31-07

## APPENDIX A

Iluka shall:

1. **Within 120 days of the issuance of this Order**, submit to the Department for approval, modifications to your existing operation and maintenance (O&M) manual that would prevent unauthorized migration of product and contaminated water discharges from the Hickory and Concord sites. These modifications shall include:
  - Schedule for routine sweeping and cleaning of the Hickory and Concord Stacker truck loading and entrance areas
  - Changes in pipeline layouts to prevent offsite discharges of product
  - Additional environmental awareness training for Iluka employees
  - An expanded system for conducting and logging inspections of water handling process systems
  - Location of thick walled and double walled pipe installed along with a schedule for inspection and replacement
  - Formalize the erosion and sedimentation inspection plan and provide a schedule for timely corrective actions on the problems identified
  - Periodic, scheduled inspection of the sediment and erosion control structures, especially diversions and sediment basins along slurry pipelines to insure their integrity and adequacy
  - A schedule or system for dredging the Old Hickory sedimentation basin in order to insure maintenance of 2' of freeboard at all times
  - Revisions to plant and field operating procedures to improve monitoring of process water systems and provide guidelines for handling problems when they occur.
2. **Within 120 days of the issuance of this Order**, submit to the Department for review and approval a plan and schedule for the installation of new or replacement / enlargement of existing sediment and erosion control structures to increase water storage at all the facilities.
3. **Within 120 days of the issuance of this Order**, submit to the Department for review a plan and schedule for the installation of equipment monitors and radio / telemetry systems and controls on process water handling systems along with replacement of current field booster pumps with variable speed drive pumps.

## **APPENDIX B**

Iluka shall perform the SEP identified below in the manner specified in this Appendix.

1. The SEP to be performed by Iluka is to install a reverse 911 system which allows Sussex County to call citizens in the event of an emergency or a mandatory evacuation. This project enables Sussex County to fulfill its obligations under federal law to better respond to chemical spills and other natural and man made emergencies.
2. The SEP shall be completed by September 15, 2007.
3. Iluka shall submit progress reports on the SEP on a monthly basis, due the 10th day of each month.
4. Iluka shall submit a written final report on the SEP, verifying that the SEP has been completed in accordance with the terms of this Order, and certified either by a Certified Public Accountant or by a responsible corporate officer or owner. Iluka shall submit the final report and certification to the Department within 90 days from the effective date of the Order.
5. If the SEP has not or cannot be completed as described in the Order, Iluka shall notify DEQ in writing no later than August 1, 2007. Such notification shall include:
  - a. an alternate SEP proposal, or
  - b. payment of the amount specified in Paragraph D.2 as described in Paragraph D.1.
6. Iluka hereby consents to reasonable access by DEQ's staff to property or documents, for verifying progress or completion of the SEP.
7. Iluka shall submit to the Department written verification of the final overall and net project cost of the SEP in the form of [a certified statement itemizing costs, invoices and proof of payment, or similar documentation] within 30days of the project completion date. For the purposes of this submittal, net project costs can be either the actual, final net project costs or the projected net project costs if such projected net project costs statement is accompanied by a CPA certification or certification from Iluka's Chief Financial Officer concerning the projected tax savings, grants or first-year operation cost reductions or other efficiencies.

Documents to be submitted to the Department, other than the civil charge payment described in Section D of the Order, shall be sent to:

Frank Lupini  
Department of Environmental Quality  
Piedmont Regional Office  
4949-A Cox Road  
Glen Allen, Virginia 23060